... shall, notwithstanding anything to the contrary contained in any written law, be admissible at his trial in evidence..." are designedly very wide and fall to be widely construed, and it would be undesirable in the extreme to narrow their meaning. Admissibility of a statement is one thing; its probative value is another.

The key question was whether the statement was made voluntarily? It was stressed in argument by counsel for the defence that the moment section 112 of the Criminal Procedure Code was read out to the accused it constituted a threat or inducement in the sense that his frame of mind was such that he was bound to make a statement truthfully, whether in answer to any questions or not, and that failure to do so would entail criminal prosecution. In that frame of mind, it was argued, he had no choice but to comply with the request. It was also contended that the accused was presumed to know the law, in particular, section 113 of the Criminal Procedure Code.

Dealing with the second contention, I would like to correct the false impression that every person is presumed to know the law. It would be contrary to common sense and reason if it were so. The rule is that ignorance of the law shall not excuse a man or relieve him from the consequences of a crime.

It was not denied that the accused made the statement in the form in which it appeared. Its validity as evidence was attacked on the ground that when the provisions of section 112 of the Criminal Procedure Code were read out to him, his frame of mind was such that he was bound to answer all questions put to him, otherwise he would be in trouble. In my judgment that contention was a bit far-fetched, and the circumstances did not point in that direction. When the provisions of section 112 of the Criminal Procedure Code were read out to him, it would not be unfair to infer that he was aware of the proviso that he was not obliged to answer any incriminating question. He is an educated man, and legally qualified and has held judicial and legal appointments. I do not think he was likely to be threatened or influenced. He said he knew the law and therefore the possibility that corruption charges might be preferred against him could not have escaped his mind. Further, the statement was made at a date convenient to him and in his cosy office in the presence of his legal advisers. All the indications shewed that the statement had not been obtained in consequence of something said or done by the B.S.N. officers which amounted to an express or implicit threat or promise to him. Looking at the interview as a whole, I am satisfied that the statement was made voluntarily.

Ruling accordingly.

Solicitors: *R.R. Chelliah Bros.; Adlan & Haji Suhaimi.*

PUBLIC PROSECUTOR v. DATUK HAJI HARUN BIN HAJI IDRIS (No. 2)

[O.Cr.J. (Raja Azlan Shah F.J.) May 18, 1976]

[Kuala Lumpur — Federal Territory Criminal Trial No. 2 of 1976]

Criminal Law and Procedure — Trial — Charge of corruption — Whether accused is member of a public body i.e. State Government of Selangor — Whether he solicited gratification — Whether gratification was solicited corruptly — Gratification solicited as inducement to obtain approval of Executive Council in respect of application.

Bribery and Corruption — "Solicit" — "Corrupt" — "Inducement" — Gratification — Menteri Besar — Whether member of Government — Prevention of Corruption Act, 1961, ss. 3(a)(ii), 9(b).

The accused was charged with three charges of corruption. It was alleged that the accused as Mentri Besar, Selangor: (a) solicited the sum of $250,000 for UMNO as an inducement to obtain the approval of the Executive Council in respect of an application for a piece of State land; (b) being a member of a public body accepted for UMNO the sum of $25,000 as an inducement to obtain such approval; (c) accepted for UMNO the sum of $225,000 as an inducement to obtain such approval.

It was also alleged that the accused was a member of a public body, namely, the Government of Selangor, or alternatively that he was an agent of the Ruler of the State of Selangor.

Held: (1) the accused as Menteri Besar was a member of a public body, that is, the Government of Selangor;

(2) on the facts of this case the accused did solicit for UMNO a gratification of $250,000;

(3) the circumstances in which the gratification was solicited gave rise to the inference that it was solicited corruptly;

(4) the accused solicited the gratification as an inducement to obtain the approval of the Executive Council in respect of the application for the land;

(5) the facts showed that the accused accepted a gratification from the Hongkong and Shanghai Bank of $25,000 through Haji Ahmad Razali at the airport on or about August 16, 1972 and that he on or about March 27, 1973 accepted from the Hongkong and Shanghai Corporation a gratification of $225,000 in his office in Kuala Lumpur;

(6) the accused accepted the gratification of $25,000 and $225,000 as an inducement to do an official act in connection with the bank's application for alienation of the land;

(7) on the evidence the prosecution had proved its case in relation to all three principal charges which if unrebutted would warrant the conviction of the accused;

(8) the accused did not rebut the evidence for the prosecution and on all the evidence considered as a whole, the charges against the accused have been proved beyond reasonable doubt.

Cases referred to:-

(1) *Sweeney* v. *Astle* [1923] N.Z.L.R. 1198, 1202.
(2) *Lim Kheng Kooi* v. *Reg* [1957] M.L.J. 199.
(3) *R.* v. *Smith* [1960] 1 All E.R. 256.
(4) *Chempan Varkey* v. *State of Kerala* (1972) Indian Yearly Digest 2099.
(5) *R.* v. *Andrews-Weatherfoil Ltd.* 56 Cr. App. R. 31; [1972] 1 W.L.R. 118; [1972] 1 All E.R. 65.
(6) *Crown Prosecutor* v. *R.K. Pillai* A.I.R. 1948 Mad. 281.
(7) *Imperatrix* v. *Appaji* (1896) I.L.R. 21 Bom. 517.
(8) *B.K. Sen* v. *Prasad* A.I.R. 1945 Pat. 259.
(9) *R.* v. *Swemmer* 15 E. & E. Digest (Rep.) 119.
(10) *In re M.S. Mohiddin* A.I.R. 1942 Mad. 561.
(11) *In re Varadadesikachariar* A.I.R. 1950 Mad. 93.

CRIMINAL TRIAL.

Tan Sri Datuk Haji Mohamed Salleh bin Abas,

(Solicitor-General) (*Abu Talib bin Othman* with him) for the Public Prosecutor.

R.R. Chelliah (*P. Vijendran* and *Haji Suhaimi bin Datuk Kamaruddin* with him) for the accused.

Raja Azlan Shah F.J.: The accused is charged as follows:

"*First Charge:* That you between February 22, 1972 and July 24, 1972, in your office at Kuala Lumpur, then in the State of Selangor, corruptly solicited for a political party, namely, United Malays National Organisation (UMNO), a gratification, to wit, two hundred and fifty thousand dollars ($250,000) from the Hongkong and Shanghai Banking Corporation, Kuala Lumpur, as an inducement to you, being a member of a public body, namely Government of the State of Selangor, to obtain the approval of the Executive Council of the Government of the State of Selangor in respect of an application of the said bank for alienation of a piece of State land held under T.O.L. 6450 for the purpose of amalgamating the land applied for with Lots 76, 77 and 78, Section 11, Bandaraya Kuala Lumpur and to construct thereon a multi-storey building and that you thereby committed an offence punishable under Section 3(a)(ii) of the Prevention of Corruption Act, 1961.

Second Charge: That you on or about August 16, 1972 at the Kuala Lumpur International Airport, Subang, in the State of Selangor, being a member of a public body, to wit, Mentri Besar Selangor, did accept from the Hongkong and Shanghai Banking Corporation for a political party, namely United Malays National Organisation (UMNO), a gratification, to wit, twenty-five thousand dollars ($25,000) cash through one Haji Ahmad Razali bin Haji Mohd. Ali as an inducement for your aiding in procuring the performance of an official act, to wit, to obtain the approval of the Selangor State Executive Council in respect of an application of the said bank for alienation of a piece of State land held under T.O.L. 6450 for the purpose of amalgamating the land applied for with Lots 76, 77 and 78, Section 11, Bandaraya Kuala Lumpur and to construct thereon a multi-storey building and that you thereby committed an offence punishable under Section 9(b) of the Prevention of Corruption Act, 1961.

Alternatively: That you on or about August 16, 1972 at the Kuala Lumpur International Airport, Subang, in the State of Selangor, being an agent of the Ruler of the State of Selangor, to wit, Mentri Besar Selangor, did corruptly accept from the Hongkong and Shanghai Banking Corporation for a political party, namely, United Malays National Organisation (UMNO), a gratification, to wit, twenty-five thousand dollars ($25,000) cash through one Haji Ahmad Razali bin Haji Mohd. Ali as an inducement for showing favour in relation to your principal's affairs, to wit, to obtain the approval of the Selangor State Executive Council in respect of an application of the said bank for alienation of a piece of State land held under T.O.L. 6450 for the purpose of amalgamating the land applied for with Lots 76, 77 and 78, Section 11, Bandaraya Kuala Lumpur and to construct thereon a multi-storey building and that you thereby committed an offence punishable under Section 4(a) of the Prevention of Corruption Act, 1961.

Third Charge: That you on or about March 27, 1973 in your office in Kuala Lumpur, then in the State of Selangor, being a member of a public body, to wit, Mentri Besar Selangor, did accept from the Hongkong and Shanghai Banking Corporation, Kuala Lumpur for a political party, namely, United Malays National Organisation (UMNO), a gratification, to wit, two hundred and twenty-five thousand dollars ($225,000) cash as an inducement for your aiding in procuring the performance of an official act, to wit, to obtain the approval of the Selangor State Executive Council in respect of an application of the said bank for alienation of a piece of State land held under T.O.L. 6450 for the purpose of amalgamating the land applied for with Lots 76, 77 and 78, Section 11, Bandaraya Kuala Lumpur and to construct thereon a multi-storey building and that you thereby committed an offence punishable under section 9(b) of the Prevention of Corruption Act, 1961.

Alternatively: That you on or about March 27, 1973 in your office in Kuala Lumpur, then in the State of Selangor, being an agent of the Ruler of the State of Selangor, to wit, Mentri Besar Selangor did corruptly accept from the Hongkong and Shanghai Banking Corporation, Kuala Lumpur, for a political party, namely, United Malays National Organisation (UMNO) a gratification, to wit, two hundred and twenty-five thousand dollars ($225,000) cash as an inducement for showing favour in relation to your principal's affairs, to wit, to obtain the approval of the Selangor State Executive Council in respect of an application of the said bank for alienation of a piece of State land held under T.O.L. 6450 for the purpose of amalgamating the land applied for with Lots 76, 77 and 78, Section 11, Bandaraya Kuala Lumpur and to construct thereon a multi-storey building and that you thereby committed an offence punishable under section 4(a) of the Prevention of Corruption Act, 1961."

To appreciate the charges it is necessary to give a narrative of the chronological events as established by the prosecution which led to the prosecution of the accused.

The Hongkong & Shanghai Banking Corporation ("the bank") own lots 76, 77 and 78, Section 11, Bandaraya, Kuala Lumpur and also a narrow strip of land held on T.O.L. 6540 since 1963, measuring 450 sq. ft. which is sandwiched between lots 76 and 77. This area has been zoned for comprehensive development. The bank proposed to develop that land so as to provide a suitable headquarters office for their banking activities in East and West Malaysia, and incorporate an investment block with the building premises to service the bank. So in April 1971 they commissioned a firm of architects, Messrs. Swan & Maclaren to design the building. Late in 1972 this firm name was changed to Jurubena Sinar Murni. During the relevant period Peter Lim Teik Oon, the resident partner, was dealing with the project. Messrs. Swan & Maclaren put up their report and designed a study model of the building, which was a 28-storey building with a cantilevered podium block extending over Jalan Benteng and an underground car-park. The estimate was in the region of $27 million.

On April 29, 1971, the bank's property managers, Messrs. Wicks & Partners, wrote to the State Planning Officer, Selangor regarding the proposed project. That letter was re-directed to the Planning Committee, Bandaraya, who replied that they had no technical objection to the bank's application for alienation of the strip of land held on T.O.L. 6540.

So on June 18, 1971 Messrs. Wicks & Partners wrote to Pegawai Pemungut Hasil Tanah, Kuala Lumpur ("PHTKL") enclosing their formal application for alienation of the land held on T.O.L. 6540 for purpose of amalgamation with lots 76, 77 and 78, and construction of a multi-storey building on the said lots. It was acknowledged by the Land Office on June 22, 1971.

The initial plans were submitted to the Planning Committee, Bandaraya, and on August 17, 1971 the Committee approved the project in principle but laid down six conditions; two of the conditions were: (1) that the bank had to obtain prior approval of the State Government to put up any projection over Jalan Benteng as that involved using the air-space over Jalan Benteng, which was State land, and (2) the problem of night hawkers.

The bank was informed by the Planning Officer by letter dated August 30, 1971 that until these two problems were solved to the Planning Committee's

satisfaction, their proposed project could not be entertained. The bank was also informed to communicate direct with the State Government regarding the State land. A copy of that letter was extended to PHTKL. The bank did communicate with the PHTKL on September 9, 1971 concerning the problems of the air-space and the underground car-park and they sent a reminder on January 14, 1972, but no formal application for alienation of the State land over Benteng was made until January 30, 1973.

On October 2, 1971 Khalil Akasah, Special Officer to the Prime Minister, wrote to the accused a letter entitled "The Construction of a New Building for Hongkong and Shanghai Bank and a "Plaza". In that letter the writer discussed about the private sectors' participation in the construction of new buildings in accordance with Government plans to amend the Laws of Construction for the Kuala Lumpur area. The last three paragraphs speak for themselves:

"In support of this plan, the Hongkong and Shanghai Banking Corporation has expressed their intention to build a 23-storeys sky-scraper at their present site which is situated at Leboh Ampang. The Bank's plan includes a "Plaza" with a shopping arcade and a flower garden. As this project is a huge one a portion of the Government's land near the embankment of Klang river is required. The Bank's Representative stated that it would not hinder the public traffic in that area. They have already written to the District Office about it.

Attached herewith a letter from the Hongkong and Shanghai Banking Corporation together with a photograph of their project. I have pleasure to note that the Municipality after examining the plan of the above-mentioned building, does not have any objection to the bank's plan.

In the construction scheme, the bank will also beautify the Jame' Mosque which is nearby so as to make the whole area look more beautiful. I trust that your honourable will have no objection to the bank's plan to participate in the Second Malaysia Plan, especially as it shows the faith of the private sector and to give a new look to Kuala Lumpur. I sincerely hope your honourable will let us have your decision soon so that the Bank could be notified."

By the end of 1971 the bank had still not received approval of their application for alienation of the land held on T.O.L. or to proceed with their project. The bank manager, D.J.R. Smorthwaite, expected approval of their plans to be given within a matter of 6-8 weeks from the date of submission. The delay was a significant consideration from the point of view of investment. For a large expatriate firm like the bank, the formal difficulties seemed somewhat greater. They naturally wanted it solved expeditiously. The main problem encountered was the application for alienation of the small strip of land held on T.O.L. and the fact that their plans called for a cantilevered podium block extending over part of Benteng. On the latter aspect, they were more concerned with the air-space than the land. To them, or at least to their architect, the problem concerning the air-space was a novelty since they thought it was not provided for under the National Land Code. Because it also concerned State Land and as they considered the accused was head of the State Government, they explored the possibility of a meeting with him. If a meeting between the accused and the bank officials could be arranged, their problems could be solved expeditiously, and the bank officials saw just that as a distinct possibility. But none of them, Smorthwaite, or J.G.T. Sim, the deputy Manager, knew the accused personally. Peter Lim too did not know the accused personally. So the three had a discussion and the outcome of it was that Peter Lim would enlist the help of a longtime friend, Chew Beng Chiat, to arrange a meeting.

Peter Lim contacted Chew Beng Chiat. Chew said he did not know the accused personally but he knew Rosedin bin Haji Yaacob, the accused's political secretary. That was good enough for Peter Lim who asked Chew to arrange a meeting between him and Rosedin. A luncheon meeting was then arranged at Le Coq d'or sometime in February 1972 where all three attended. Peter Lim briefed Rosedin on the bank's building project and the problems regarding the air-space and said that the bank officials would like to see the accused concerning their application for the air-space. Rosedin agreed to brief the accused on the matter and would give an answer. After being reminded by Peter Lim, Rosedin briefed the accused who agreed to see the bank officials on February 22, 1972 at 9.30 a.m. On February 14, 1972 Rosedin wrote to Smorthwaite notifying him of the date of the meeting and also sent copies to Pegawai Daerah, Kuala Lumpur, Pegawai Kemajuan Negeri, Selangor, Pegawai Peranchang Negeri, and Datuk Bandaraya (Exhibit P12). The bank agreed to the date (Exhibit P24).

The meeting on February 22, 1972 was attended by Smorthwaite, Peter Lim and Ishak, the representative of the bank's quantity surveyor (Ishak was not called by the prosecution, but he was made available to the defence at the end of the prosecution case). Smorthwaite explained to the accused the bank's schemes and their related problems and showed him the study model. The accused seemed receptive but said he would have to consult his legal adviser and land officers concerning the title to the air-space and the connected problems of relocating the night hawkers and the car-park. He further indicated that if the problem of the air-space could be resolved satisfactorily, he thought solutions to the other problems could be found. Smorthwaite was happy with the outcome of that meeting.

The bank kept their headoffice in Hongkong informed of the progress of their project and the meetings with the accused by telephone and by letter because they had to obtain the necessary approval from them. Following the first meeting on February 22, 1972 Smorthwaite wrote to Hongkong (Exhibit P13) reproducing what took place at that meeting, and is as follows:

"My dear Mosley,

I refer to Nolan's letter of February 12.

BANK PROPERTY

Kuala Lumpur Office

As advised by Nolan, I had a meeting this morning with the Chief Minister at which I was able to explain in general terms what we had in mind and why we consider it necessary to project our podium block out over Benteng.

I was able to illustrate our ideas with the very good model produced by our architects and I think it is safe to say that the Chief Minister is enthusiastic and has given his approval in principal. However, the idea of building out over a public thoroughfare is new to West Malaysia and before giving us firm approval the Chief Minister has said that he would like to look into the legal implications. It seems that he is not

concerned about our wishing to build under Benteng, but is curious to know what our title will be to the bit that sticks out into space; also who bears the responsibility should it collapse on to a crowded area.

Unfortunately, as I have said, there does not appear to be a precedent and it may well be that we shall have to take a T.O.L. for the area of land over which we wish to build with an undertaking to allow public right of way. All this may take time although the Chief Minister had already summoned the various authorities concerned before we left his office, so it may well be that things will now move a little faster than previously. The main thing is that we have the agreement in principle of both the Federal and State Governments and now that we have got beyond the departmental stage, we should be in a position to submit our drawings to the town planners in the not too distant future.

The architects advise me that the town planning stage will not take more than six weeks and provided you can let us have your approval in due course we would hope to be able to move to our temporary accommodation in the latter part of this year.

Yours very truly,"

However, on March 7, 1972 the application for alienation of the T.O.L. land was still not settled. It was still under consideration as was borne out by PHTKL's letter of even date to Messrs. Wicks & Partners (Exhibit P9A page 104). On April 24, 1972 Smorthwaite again wrote to Hongkong. The first two paragraphs are relevant, and I produce them here:

"I confirm my telephone conversation of Saturday 22 during which I advised you that we now think that we shall be given a 99 year lease for that part of Benteng over which we wish to build. This will enable us to build over and under without hindrance and we believe that there should be no objection if we want the podium to extend upwards for three or four stories. I am told that the premium for this lease is likely to be very nominal.

I have also managed to find out the State Government's ideas on the extra "development charge" and a figure of 2% has been mentioned or alternatively, we could give up one floor for their use. I do not know how they would plan to utilise the space, and obviously I think we shall need to have a few more details before we commit ourselves. However, now that we have got down to fundamentals, we do not anticipate any further hold up and firm approval should be given fairly soon."

On July 4, 1972 the Standing Committee (Majlis Jawatankuasa Tetap, Tanah & Galian), recommended approval of the bank's application for alienation of the T.O.L. land.

On July 7, 1972 the Chief Administrative Officer, Bandaraya, Ahmad Hussaini bin Abdul Jamil, was summoned to attend a meeting together with the accused and a number of Government officials, to discuss the bank's application for State land on Jalan Benteng. At that meeting Ahmad Hussaini reiterated Bandaraya's view that they had no technical objection in principle to the bank's application subject to certain conditions.

On July 13, 1972 the Executive Council which was presided by the accused deferred decision concerning the application for alienation of the T.O.L. land pending an application from the bank for alienation of the State land on part of Jalan Benteng.

There was a second meeting between the accused, Smorthwaite and Peter Lim on July 24, 1972. Smorthwaite had asked for that meeting because he still felt matters concerning the air-space and the underground car-park were being held up. Smorthwaite said he asked Peter Lim to arrange for that meeting. Peter Lim said Rosedin informed him of the date of that meeting; so was the bank. Neither Smorthwaite nor Peter Lim was cross-examined on this point. It is therefore quite obvious that Peter Lim must have asked Rosedin to arrange for that meeting. The meeting was attended by a number of Government officials. When Smorthwaite explained to the accused the two matters the latter directed the government officials present to expedite them. Smorthwaite gained the impression that the bank's problems — night-hawkers, underground car-park and air-space — were resolved on the spot. That was reflected in his letter to Hongkong dated July 24, 1972, *vide* the first and second paragraphs which read:

"We are at last making a breakthrough and I have had successful meetings with the Menteri Besar and the Deputy Governor of Bank Negara.

My meeting with the Menteri Besar was attended by the District Officer, Commissioner of Town Planning, State Development Officers and a few others. In brief, the Menteri Besar commenced by informing the meeting that he was in favour of our new development and that he wanted it settled once and for all with no more arguments. The question of temporary accommodation for the night-hawkers was resolved on the spot as was the question of our being given a lease for that part of Benteng over and under which we propose to build. We have not been advised of the premium we shall have to pay for the lease, but we still believe that it will be nominal."

On August 7, 1972 Sulaiman Khan on behalf of PHTKL conveyed Executive Council's decision to Messrs. Wicks & Partners.

On the eve of the accused's departure for Munich on August 16, 1972 a sum of $25,000 was collected by Peter Lim from the bank and handed to Haji Ahmad Razali bin Haji Mohd. Ali, the secretary to the Selangor UMNO Liaison Committee, at the Subang International Airport. He was instructed by the accused to deposit the money into the bank and that was in due course done. As this particular aspect of the case is very much involved with the 2nd charge, I will deal with it in a moment.

On August 19, 1972 Chew Beng Chiat, the intermediary who had arranged the luncheon meeting between Peter Lim and Rosedin, was paid a sum of $10,000 by Peter Lim on behalf of the bank. To the bank officials Chew was instrumental to arrange the meetings between them and the accused.

On August 21, 1972 Swan & Maclaren wrote to Pengarah Tanah & Galian, Persekutuan ("PT&G") enclosing a copy of a site plan indicating the area of State land on Jalan Benteng which the bank proposed to apply for a 99 year lease. On October 14, 1972 Swan & Maclaren submitted a formal application of their plans to Bandaraya to construct a 28-storey building. This was processed and in due course a development order was issued on February 23, 1973 (Exhibit P28). On October 18, 1972 PT&G wrote to PHTKL enclosing Swan & Maclaren's letter of August 21, 1972, with a copy to the latter directing them to communicate direct with PHTKL "untok mendapat keterangan lebeh lanjut". Sulaiman Khan took action on Swan & Maclaren's letter and on November 3, 1972 directed his Land Office clerk to inform the bank to file a formal application. That was done as was borne out by a minute in Exhibit

P9A to the effect that a discussion was held with one Mohd. Din of HKSBC on December 4, 1972 and the forms which had been handed to him for necessary action were still awaited.

On December 18, 1972 Jurubena Sinar Murni (successor of Swan & Maclaren) wrote to PHTKL referring him to the bank's application for the alienation of the T.O.L. land dated June 18, 1971 and inquired "dapatkah kiranya kami diberi sedikit bayangan bila agaknya penukaran tanah yang sekarang di-pegang di-bawah T.O.L. 6540 itu boleh dibenarkan".

It would therefore appear after a lapse of 1½ years the application was still not solved.

On January 1, 1973 Raja Azman bin Raja Ismail assumed office as PHTKL. On January 23, 1973 he received a phone call from the accused and he minuted it in the file (Exhibit P9A) as follows:

"Saya telah menerima talipon daripada Y.A.B. M.B. Sel bertanyakan kedudokan file permohonan tanah Hongkong Shanghai Bank.

"Perkara ini perlu di-segerakan spt. arahan Y.A.B. Datuk M.B. itu. Saya hendak mengkaji file ini."

Obviously the new PHTKL did not know the subject-matter of the "arahan". On the same day he minuted to his Chief Assistant District Officer as follows:

"Saya hendak bercakap atas hal ini dengan segara."

Between January 29, 1973 and October 18, 1973 there were a series of correspondence between the bank's architect, Jurubena Sinar Murni and PHTKL, enquiring from the latter the result of their applications and informing him of the new name of the company which was to carry on the project, *i.e.*, Benteng Redevelopment Sdn. Bhd., and also notifying him that the bank would vacate their premises on April 16, 1973; between Jurubena Sinar Murni and Pengarah Parit & Taliair, Negeri, regarding the river-reserve; between Jurubena Sinar Murni and Bandaraya concerning the cantilever projection over Benteng and the underground car-park; and between PHTKL and Bandaraya regarding the same matter.

On January 30, 1973 the bank filed a formal application for alienation of State land on Benteng, measuring 3,800 sq. ft.

On February 19, 1973 a set of keys and a receipt (Exhibit P19) concerning a locked tin-box registered in the name of the accused made available to him or his personally authorised representative and kept in the bank's security safe were handed to Peter Lim who on February 20, 1973 handed them to Rosedin for onward transmission to the accused. On March 27, 1973, the bank released the $225,000 which were in the locked tin-box to Rosedin as the accused's personally authorised representative. This is the subject of the 3rd charge and will be dealt with in proper time.

On October 18, 1973 the Executive Council gave formal approval to the bank's application. The bank was notified of the decision on November 23, 1973.

As a result of information received by Biro Siasatan Negara, a police report was lodged on July 14, 1974.

On November 22, 1975 a statement was recorded from the accused. I held a trial within a trial to determine whether the statement was made voluntarily. I am satisfied that it was so made, and I admit it as Exhibit P10.*

On November 24, 1975, the accused was arrested.

In this case different witnesses have testified to different parts of what had happened or what had been said and also there are, in the evidence of the witnesses for the prosecution, some discrepancies, as would be expected of witnesses giving their recollections of a series of events that took place in 1971-1973. In my opinion discrepancies there will always be, because in the circumstances in which the events happened, every witness does not remember the same thing and he does not remember accurately every single thing that happened. It may be open to criticism, or it might be better if they took down a notebook and wrote down every single thing that happened and every single thing that was said. But they did not know that they are going to be witnesses at this trial. I shall be almost inclined to think that if there are no discrepancies, it might be suggested that they have concocted their accounts of what had happened or what had been said because their versions are too consistent. The question is whether the existence of certain discrepancies is sufficient to destroy their credibility. There is no rule of law that the testimony of a witness must either be believed in its entirety or not at all. A court is fully competent, for good and cogent reasons, to accept one part of the testimony of a witness and to reject the other. It is, therefore, necessary to scrutinize each evidence very carefully as this involves the question of weight to be given to certain evidence in particular circumstances.

It is also salutary to remember that in a corruption case, direct testimony of wholly disinterested witnesses can seldom, if ever, be forthcoming. It is invariably circumstantial evidence which has to be availed of in such a case.

Another salutary principle to observe is the fact that this is not a court of morals, and I am not to allow any moral disapproval to colour my judgment on matters of fact.

It is in this light that the evidence of the prosecution witnesses, in particular that of Peter Lim, Rosedin, Chew Beng Chiat and the bank officials must be considered. Their testimonies are not to be rejected in toto as tainted without adequate justification, without meticulous scrutiny. The further circumstance that they are interested witnesses assumes a greater significance and it may not be prudent to base a conviction on their sole evidence without corroboration.

The object of corroboration is no doubt to satisfy the court that the witnesses are telling the truth and that it is reasonably safe to act upon them. It is not necessary that the corroboration should be of the actual commission of the crime, for then there would be independent evidence of the commission of the offence. It would be enough corroboration if there

* See report at p. 14 *ante*.

is independent evidence of relevant circumstances connecting the accused with the crime.

The first charge against the accused is that between February 22, 1972 and July 24, 1972 he corruptly solicited for UMNO a gratification of $250,000 from Hongkong & Shanghai Banking Corporation as an inducement to him, being a member of a public body, namely the Government of the State of Selangor, to obtain approval of the Executive Council in respect of the bank's application for the T.O.L. land for purpose of amalgamation with lots 76, 77 and 78, an offence under section 3(a)(ii) of the Prevention of Corruption Act, 1961.

In order to establish a charge under section 3(a)(ii) the prosecution must prove:

(1) that the accused is a member of the Government of the State of Selangor;

(2) that between those 2 dates he solicited for UMNO a gratification of $250,000;

(3) that the circumstances in which the gratification was solicited give rise beyond reasonable doubt to an inference that it was solicited corruptly;

(4) that the accused solicited the gratification as an inducement to obtain approval of the Executive Council in respect of the bank's application. I will now consider these 4 ingredients.

(1) *That the accused is a member of the Government of the State of Selangor.*

Without going into legal semantics, the accused as Menteri Besar, Selangor, (*vide* Selangor G.N. 419/69) obviously is a member of the State Government. In a federation, like ours, each State has within its constitutional limitations a unitary system of Government in which the Legislative Assembly is supreme and the different functions or organs of Government can be mingled at will. The Legislative Assembly is closely interwoven with the executive by reason of members of the Government being also members of the Legislative Assembly, an arrangement loosely termed responsible Government. Under the Laws of the Constitution of Selangor, 1959, the Ruler is a constitutional monarch. He is the executive authority of the State, but, with certain exceptions, he acts on the advice of his Executive Council which he appoints. He appoints the Menteri Besar; he also appoints members of the Executive Council on the advice of his Menteri Besar. The Menteri Besar presides over the Executive Council. It is the Executive Council who is the executive organ of the State Authority and exercise executive functions in the name of the Ruler. The Menteri Besar is paid from the State coffers. If he is not a member of the Government, I do not know who is.

(2) *That between February 22, 1972 and July 24, 1972, the accused solicited for UMNO a gratification of $250,000.*

The word "solicit" is a common English word, and it means, in its simplified form, "to ask". In various English dictionaries this simple meaning is given, but other similar words are also used to explain other meanings it possesses, such as "to call for", "to make request", "to petition", "to entreat", "to persuade", "to prefer a request". — see *Sweeney* v. *Astle*.[1] Thus when a businessman advertises his goods, we say he is soliciting customers. He wants to sell his goods, and he solicits people to buy them. Again, such a businessman goes to a person whom he selects to try to induce him to buy, we say he is soliciting orders. To solicit then, means to ask for or invite offers. Thus to solicit an order for goods means merely to ask for or invite offers for the purchase of those goods. A statement therefore, the real and operative purpose of which is to induce somebody to make such offers, amounts to asking for or inviting such offers. But to constitute soliciting, the request or invitation must reach the person solicited. Now, coming to our point, when a politician makes a statement to someone in an appropriate circumstance, to the effect "what are your views on political donations to party funds?", the real and operative purpose of which is to induce that person to ask for or invite offers for making a political donation to party funds, we say he is soliciting a political donation.

Soliciting does not cease to be soliciting if it is received by the person solicited not from the person who solicits, but by other means of transmission or communication, such as a letter, circular, newspaper advertisement, telephone or a message. To take the illustration further, if the politician enlists the services of his subordinate or some third person or persons to do the act of soliciting for political donation, that is nonetheless soliciting for the same by him. It is by the instrumentality of his subordinate or the third person that the act was done for him.

Let us now consider the evidence.

Peter Lim said that towards the end of the first meeting with the accused on February 22, 1972 he had vague recollections that the accused had asked Smorthwaite for his views on political donation to party funds and Smorthwaite had replied "yes, we would contribute". He further said that he raised the question of $10,000 with the bank officials at a later date when things seemed to be progressing quite well. He was cross-examined at length and on this point he explained that the event happened such a long time ago that he could not be sure. He remembered the event only because after Smorthwaite and he had left the accused's room the former had asked him in a low tone to remain behind and endeavour to find out what sort of sum was expected of the bank. Peter Lim then went to Rosedin's room and inquired from him the sort of sum expected of the bank. Rosedin then said "wait" and he left the room and came back and told Peter Lim the amount was $250,000. Peter Lim then went to the bank and informed either Smorthwaite or Sim, he said he could not remember which one, the amount, and while doing so, one or the other, Smorthwaite or Sim, came into the room and joined in the discussion. Peter Lim further said that when he told them the amount, they were comparing other figures which he said he did not know; probably he said they were discussing about other figures which he took it to mean contribution which they had obtained from other sources.

Sim, who had assumed office as deputy manager at the end of February 1972, said Smorthwaite briefed

him on the background of the bank's application and the connected problems of the title to the air-space and the amalgamation of the land on which the bank proposed to put up the building. Here is his evidence-in-chief:

"One solution to overcome the difficulties was suggested to us by Peter Lim that we might consider making a donation to party funds. That was in early 1972. In April.

After a short space of time we were informed that a sum of $250,000 would be acceptable to the authorities concerned, in particular, to Datuk Harun.

A further sum of $10,000 was required to be paid to the intermediary who had arranged meetings for us with Datuk Harun.

The bank agreed to such payment."

In cross-examination he said the suggestion of donation to party funds was first conveyed to him by Peter Lim and then they discussed it with Smorthwaite. He emphasised that it was not Peter Lim's own suggestion. He said "the basis of the decision to accept the idea to make a donation to the party (which he named as UMNO) was because of the request that had been made of us." In respect of the $250,000 he has this to say:

"I only knew what Peter Lim told me. Peter Lim did not convey to me direct that $250,000 was acceptable to the authorities concerned. That was conveyed to Smorthwaite who informed me. Peter Lim did not identify the authorities concerned to Smorthwaite. Datuk Harun at that time, as we understood it, was the titular head of the authorities with whom we were concerned with. I therefore conclude that the authorities referred to was Datuk Harun. When Peter Lim gave the information, I believe the source of the information may have been from an intermediary of Datuk Harun or one of his staff."

Smorthwaite testified that at the first meeting on February 22, 1972, donation to party fund was not mentioned. It was indicated to him by Peter Lim only in about April 1972, but no amount was fixed. He said prior to the second meeting with the accused on July 24, 1972, he had referred the request for donation to UMNO to the Hongkong Headoffice and had received their approval in principle. However, at that stage no amount was mentioned. After that second meeting was concluded he requested Peter Lim to remain behind and endeavour to find out what sort of sum was expected of the bank. He said he could not remember the sequence of events but later in the day Peter Lim advised "us" that a sum of $250,000 "cash, no receipt" would be acceptable. Peter Lim also raised the question of payment of $10,000 to be made to the gentleman who had arranged the first meeting with the Chief Minister. He agreed to the donation of $250,000 and was so pleased with the progress of the meeting that he was in no mood to quibble over $10,000. He then said, the decision he had to make, having taken into consideration that the request for donation was probably connected with the new building project, "was not so much what we might gain by making the donation, but what we might lose if we did not, and I advised my head-office accordingly."

"When I left Menteri Besar's office on February 22, 1972, I was happy of the outcome. Not at that stage was donation to a political party mentioned.

As far as I could recall, Peter Lim said they would like a political donation. As I understood it, it was a request for a political donation. I could not indicate if the donation would be particularly helpful.

Donation not specifically tied up with the application. Not to the best of my knowledge.

Between February 22, 1972 and April, 1972. I thought that the short period of time between our request to see Chief Minister and the request for a political donation, implied that there was a connection even though nothing was actually said. I therefore regarded it as a gesture of goodwill, if you wish. I do not regard it in that line of a bribe. If a bribe had been suggested I would not have entertained it.

I conveyed what Peter Lim told me to Hongkong. I received approval in principle — Exh. P14 refers.
April 24, 1972. I had already been informed of suggestion of a donation.

A cash donation would be less worrying than to give one floor for their use."

At the end of his cross-examination on this point he said Peter Lim came to the bank and related to him. By that he understood to mean that Peter Lim had discussed the matter of the amount with Rosedin. In re-examination he said that for want of a better word he had agreed with counsel for the defence in cross-examination that the idea to make an offer of a political donation was a gesture of goodwill. He further said he did not wish to offend by refusing to make such a donation; "we would offend UMNO or the Chief Minister."

It is quite apparent that there are contradictions between the evidence of Peter Lim and that of Smorthwaite and Sim regarding the time when the political donation was requested. Nonetheless, these witnesses in substance are all telling the same story, *i.e.*, that the request was indicated to them sometime in April 1972.

Peter Lim may have given a display of faulty memories of events that transpired years before, but after watching his demeanour in the witness-box and anxiously scrutinising his answers in cross-examination I am satisfied that he is telling what is substantially true and that he is not absolutely certain of all the details. The whole incident regarding the request for the political donation is so impersonal and so unimportant to him that he could only recall vague impressions of it. As the learned Solicitor-General has very properly submitted, he could certainly have improved on his evidence if he wanted it to tally with that of Sim or Smorthwaite after reading the extensive coverage of the daily proceedings in the press. It may be noted that he gave his testimony on April 28 (Wednesday) after Sim and Smorthwaite had testified on April 23 (Friday) and April 26 (Monday), and April 27 (Tuesday) respectively. A judge can feel great confidence in the evidence given by a particular witness without accepting all to which he deposes. The maxim *falsus in uno falsus in omnibus* is neither a sound rule of law or a rule of practice. Regarding Peter Lim's evidence on this point, I think, as a matter of probabilities, it is probable that the difference as to the date was an inaccuracy due to a *bona fide* mistake.

I am of the view, quite irrespective of the evidence of Peter Lim to which exception is taken, there is overwhelming evidence that a request for a political donation was made sometime in April 1972. That is also borne out by Smorthwaite's letter to his head-

office on April 24, 1972 which he said was written after he had received indication through Peter Lim that a political donation for UMNO would be in order, and that he used the expression "the extra development charge" in the letter, for something better to call. Smorthwaite further said that from the short period of time that had elapsed between his first meeting with the accused on February 22, 1972 and the suggestion in April 1972 that a political donation would be in order, he assumed that the two, *i.e.*, the donation and the application, were interconnected even though nothing was actually said.

The evidence leaves in no doubt that an "overture" for a political donation was made sometime in April 1972 and the prosecution case is not weakened by the fact that Peter Lim may have made a contradictory statement on that aspect of the case. If the stark fact is that a political donation was indicated sometime in April 1972 and the probabilities point in that direction, and if the proven fact is that $250,000 was paid out by the bank in response to the "overture", and this had been proved beyond reasonable doubt, it follows as a matter of inexorable logic that someone must have made the request. The question is, who made the request? Was it made by Haji Ahmad Razali, Chew Beng Chiat, Peter Lim, Smorthwaite or Sim, Rosedin, or the accused?

Haji Ahmad Razali, the current deputy to the Menteri Besar, Selangor was the accused's political confidant. Could he have made the request? I do not think so. When the $25,000 was first mentioned to him at the airport he had to confirm it from the accused and had to ask him what to do with it. Such was the character of the man. The plain implication is that he had no knowledge of the matter and was hearing it for the first time at the airport. He was not authorised to receive donations. He could not possibly have made the request.

What about Chew Beng Chiat? I find him excitable, loquacious and very fascinating likely to be of interest to other persons as a contact-man and nothing more. He could not possibly have made the request.

Peter Lim gave his evidence with calmness and great assurance. Smorthwaite and Sim have borne him out that the request for a political donation did not originate from him.

Smorthwaite and Sim are categorical in their testimony that the request did not come from them.

Could Rosedin have made the request? He was the accused's political secretary since 1964. He owed the accused at least party loyalty, if at any rate, during that period. I have observed him in the witness box; he is probably not a man of very strong initiative. He was not authorised to receive donations on behalf of UMNO. He was something of a political "lightweight". The probabilities favour the inference that he did not make the request, although there is a strong probability that he served the accused as a willing hatchet man, always acting at his behest.

When all the evidence are considered even with an indulgent eye, it is impossible for any court to doubt that the request really came from the accused. He had the opportunity and authority to make such a request. He was, among other things, chairman of the Selangor UMNO Liaison Committee and was given *carte blanche* approval to operate the Special Fund. As Menteri Besar he occupied a highly responsible position of power and authority in the State, and being such, there would be many people who may believe in factual statements made by him. And Smorthwaite and Sim were only two of the many. When the request was communicated to them Smorthwaite had only one thing to say "I do not wish to offend by refusing to make such a donation; we would offend UMNO or the Chief Minister" and "As far as we were concerned Datuk Harun and UMNO were synonymous." It is therefore plausible to conclude that as far as they were concerned to refuse to make an offer of a political donation would be inimical to the prospect of obtaining the approval of their application.

But how could the bank make an offer unless and until they knew the amount so that they could obtain the approval from their headoffice. How would they know the amount unless and until they inquired. So Peter Lim was asked to make discreet inquiries. Peter Lim said he did make discreet inquiries. He asked Rosedin about it, and he came back with the figure of $250,000. Of course, Rosedin denied this part of the story and for very good reasons too. As I have said he was only a willing hatchet man and did not wish to incriminate the accused as far as he could help it.

Smorthwaite's letter of July 24, 1972 is consistent with his testimony. In that letter he said "one immediate result of this meeting (that was the second meeting on July 24, 1972) was that after a certain amount of haggling 'the extra development charge' has been fixed at $250,000 plus $10,000 for sundry expenses. I have taken the liberty of agreeing to these figures and hope this has your approval". The headoffice duly gave their approval by phone, and that was followed by letter dated September 28, 1972 — Exhibit P16.

I am satisfied that there is independent evidence of relevant circumstances connecting the accused with the solicitation.

(3) *That the circumstances in which gratification was solicited give rise to the inference that it was solicited corruptly.*

"Corrupt" means "doing an act knowing that the act done is wrong, doing so with evil feelings and evil intentions." (see *Lim Kheng Kooi* v. *Reg.*);[2] "purposely doing an act which the law forbids" (see *R.* v. *Smith*).[3]

"Corrupt" is a question of intention. If the circumstances show that what a person has done or has omitted to do was moved by an evil intention or a guilty mind, then he is liable under the section. Thus if the accused used his position to solicit gratification with a guilty mind, he is caught within the *ambit* of the section. The real point is whether there is soliciting a political donation with a corrupt intention.

The manner in which the payments were made is a relevant consideration in the present case. It is in evidence that the bank was asked to make them in cash. Smorthwaite said that he asked Peter Lim to find out how such payment should be made, and his answer was in cash, no receipt. That is substantiated by the evidence of payments in cash. The bank could, and it is very much in their power, make the payment by way of cheque, or for that matter in one lump sum in cash. But they were coerced to make it in cash, and strangely enough, in two payments. This strange behaviour necessitated the bank in opening the New Building — Property Suspense Account for their accounting purposes.

Then, the "request" for the so-called donation. That is another telling point against the accused. In ordinary circumstances, the presentation of a donation, be it by way of cheque or otherwise, is preceded by certain formalities, for example, a representative of the donor firm would personally hand it to the donee at a proper place and in the presence of witnesses; not in some "back alley". I am quite sure that the donor wants to be present to show that he is participating in whatever worthy cause the donee is undertaking, be it politics, charity, education or welfare. The donation is then properly presented and properly acknowledged. In the present case, the donation was "presented" in a very strange way. It was made in two substantial payments, one at the airport on the eve of the accused's departure overseas, and the other, literally from a locked tin-box kept at the bank at the accused's disposal. Granted that the accused could receive a cash donation, the question arises as to why did he not take the whole lot at one time and have it deposited in the Special Fund Account at the Mercantile Bank? Why on two separate occasions, and an interval of 7½ months? Is not such conduct contrary to human instinct and human nature, unless there is the overwhelming stimulus of guilt? It does appear somewhat curious and not a little disquieting that a donation should be demanded and accepted in this manner; it is incomprehensible in its motivation, unless there is a consciousness of guilt. The manner how the donation was demanded and received, in my view, lends credence to the prosecution story that it was being solicited with a corrupt mind. If the defence wish to say that the two payments were innocently demanded and received, it is for the accused to explain them. It is not the law that the prosecution has to eliminate all possible defences or circumstances which may exonerate the accused. Of course I am not unmindful of the onus on the prosecution to establish a *prima facie* case in the first instance, and that it is not enough for them to establish the facts and then to throw the onus on the accused to prove his innocence.

The substratum of the prosecution case is galling; it discloses a trail of surreptitious cash payments demanded and received, long and wide enough to sustain an inference that the donation was solicited with a corrupt mind.

(4) *That the accused solicited the gratification as an inducement to obtain approval of the Executive Council in respect of the application.*

The word "inducement" evidently refers to a future act. What is forbidden, generally speaking, is soliciting a gratification as an inducement to do any matter or transaction in which the State Government is concerned. The gravamen of the offence is soliciting a gratification as an inducement to do any official act or conduct. This need not be proved by explicit evidence but may be inferred from surrounding circumstances.

Just as "corruptly solicit" may be inferred from all the surrounding circumstances, such as evidence of payments received in response to the request made in April 1972, so can "inducement" be inferred from acts or conduct from the relevant circumstances. As this element of "inducement" is common to all the three charges, I will deal with it under the second and third charges.

The second and the third charges can be dealt with together.

The second charge against the accused is that on or about August 16, 1972, at Kuala Lumpur International Airport, Subang, being a member of a public body, to wit Mentri Besar, Selangor, accepted from the Hongkong & Shanghai Banking Corporation, for UMNO, a gratification of $25,000 cash through Haji Ahmad Razali, as an inducement for the accused aiding in procuring the approval of the Executive Council in respect of the bank's application for alienation of the T.O.L. land, an offence under section 9(b) of the Prevention of Corruption Act, 1961.

The third charge against the accused is also under section 9(b) of the Prevention of Corruption Act, 1961, the only difference is the date, the place, the amount and the person from whom he accepted the gratification, and is as follows: *"that on or about March 27, 1973, in his office in Kuala Lumpur, he accepted from the Hongkong & Shanghai Banking Corporation, a gratification to wit, $225,000.*

It must not be forgotten that the aim of the section is to punish those members of a public body who betray public office. Its object is to prevent them being put in a position where they are subject to temptation. As such the section is differently worded from section 3 which includes "for any other person". This phrase is omitted in section 9. The gist of the offence under section 9 is the "inducement" to show favour, irrespective of whether the public officer has the power to do it or not, and irrespective of whether it concerns the affairs of the public body or not.

The prosecution has to prove:

(1) that the accused is the Menteri Besar, Selangor, and as such he is a member of the State Government. I have dealt with it under the first charge. No repetition is called for;

(2) that the accused accepted from the Hongkong & Shanghai Banking Corporation a gratification of $25,000 cash through Haji Ahmad Razali on or about August 16, 1972 at the airport;

(3) that the accused accepted from the Hongkong & Shanghai Banking Corporation a gratification of

$225,000 in his office in Kuala Lumpur on or about March 27, 1973;

(4) that the accused accepted the gratification as an inducement to do any official act connected with the State Government.

(2) *That the accused accepted from the Hongkong & Shanghai Banking Corporation a gratification of $25,000 through Haji Ahmad Razali at the airport on or about August 16, 1972.*

The evidence on this point is overwhelming. As I have indicated, there are discrepancies between the evidence of the principal witness for the prosecution, but it cannot be seriously contended that such discrepancies affect the crux of the prosecution case, that is, that $25,000 was paid and received by Haji Ahmad Razali at the airport on August 16, 1972, on behalf of the accused.

On that day, Peter Lim was told by Rosedin over the phone to get ready with the first $25,000 of the contribution. It is here that counsel for the defence suggested, not very strenuously, I find, that that could not be true as Rosedin did not support that part of the story. Rosedin seemed to say that before he left the office, he received a phone call from Peter Lim saying that he (Peter Lim) had $25,000 from Hongkong & Shanghai Banking Corporation to be donated to UMNO. That may be so; reading the evidence of both these two witnesses in isolation, there appears to be a discrepancy. But after a thorough scrutiny of the entire evidence, I am satisfied that unless Rosedin had phoned Peter Lim concerning the first part of the contribution, Peter Lim would not have known the amount of the donation and the place and time to hand it. Peter Lim said, and I believe him, that he was not personally concerned with the matter. The question then arises as to whether the instruction originated from Rosedin himself or whether it was given to him by the accused. I have considered this aspect of the case very carefully and I find as a fact that it could not possibly have originated from Rosedin; as I have said, he is not a man of very strong initiative; he is only an "errand boy", always acting at the accused's behest. To call for the first $25,000 on the eve of the accused's departure is, to my mind, a bit too much of a coincidence.

The conflict in testimony between Sim and Smorthwaite and that of Peter Lim with regard to the sequence of events on this issue is neither here nor there. It does not affect the substratum of the prosecution.

The prosecution has established that the $25,000 was paid by the bank to Peter Lim on August 16, 1972, that Peter Lim handed the money to Haji Ahmad Razali at the airport, and it was properly acknowledged, that the accused was told about it, and he just said "put it in the bank".

If there is one thing which is perfectly clear to my mind, it is that the moment the $25,000 was mentioned to the accused, he did not inquire about the substantial sum of money, if it was true that that was the first time he ever heard of such a donation. He did not even convey his thanks to Peter Lim, if he was that busy to do it in person. One seldom gets a donation of that amount every day. It seems clear on the evidence that far from making inquiries on the nature of the donation, he welcomed it as a matter of course. When I have considered what he has said and done, and what he has omitted to say and do, I have no doubt left in my mind that all along he knew what the $25,000 was about; that it was the first part of the donation connected with the bank's new building project.

(3) *That the accused on or about March 27, 1973, accepted from the Hongkong & Shanghai Banking Corporation, a gratification of $225,000 in his office in Kuala Lumpur.*

On August 30, 1972, a single account, the New Building — Property Suspense Account was opened to cater for the many accounts connected with the "Development Charges". — (Exhibit P39). The whole amount of money shown in the various accounts were debited to this new account and because out of the $260,000, $35,000 was already withdrawn from this account, the balance of $225,000 in cash was kept in the cash safe under the control of Batson, the accountant.

Sometime at the end of 1972, Smorthwaite's attention was drawn to the fact that Batson was still holding the cash in his safe. It was then decided to ask Peter Lim to inquire what the Menteri Besar wished them to do with the cash. Smorthwaite said that after a few days Peter Lim came to the office and said that he had been asked to obtain a receipt from the bank concerning the money. The bank officials held a discussion and decided that the receipt would be ideal in the circumstances because that would ensure that when the money was released, they would get a proper acknowledgement. The bank then purchased a tin-box with a pad-lock and the balance of $225,000 cash was placed in it. The box was locked and kept in the securities safe in the security department under the custody of Batson who held the keys to it. Peter Lim was asked to find out whether it was acceptable to the authorities concerned — Datuk Harun — if the receipt was to state one locked tin-box contents unknown. Peter Lim subsequently informed the bank that that was acceptable to Datuk Harun. Sim's testimony was to the same effect; he was not cross-examined on this point.

It was about this time, *i.e.*, on January 23, 1973, Raja Azman, who had assumed office as PHTKL on January 1, 1973, received a phone call from the accused "bertanyakan kedudokan file permohonan tanah Hongkong Shanghai Bank", and indicating that the matter needed urgent attention.

On January 31, 1973, Batson was instructed by Smorthwaite to register the locked tin-box in the name of Datuk Harun bin Haji Idris and to indicate that it was one locked tin-box contents unknown to be made available to Datuk Harun or his personally authorised representative. Batson prepared a receipt in triplicate. The original, Exhibit P19, was meant for the accused, the duplicate copy, Exhibit P22 and the 3rd copy remained in the bank's records. A delivery order Exhibit P20, which would enable the staff

of the bank to record the item as having been removed from the records, was also prepared. Batson gave the keys and Exhibit P19 to Smorthwaite who handed them to Sim with a request to have them sent to the Menteri Besar's office for Datuk Harun. Sim handed both the items contained in an envelope to Peter Lim who acknowledged receipt of them by indorsing on the reverse of Exhibit P22 on February 19, 1973.

Peter Lim said in evidence that he could have phoned Rosedin regarding the keys because he would like to hand them as soon as possible. However, Rosedin confirmed that Peter Lim phoned him on February 20, 1973 before the latter came to his (Rosedin's) office to hand him the envelope containing Exhibit P19 and the keys with a request to hand them to the accused. Rosedin acknowledged receipt of the keys (Exhibit P7) which he prepared on Pejabat Menteri Besar's letter-head and he signed it on behalf of Menteri Besar, Selangor. Rosedin handed Exhibit P7 to Peter Lim. Peter Lim also told him that the keys concerned a locked tin-box containing $225,000 cash representing the balance of the donation, and that the accused or his representative could go to the bank to collect it, bringing Exhibit P19. Peter Lim further told Rosedin that he was prepared to introduce him to an official of the bank. He caused a copy of Exhibit P7 to be sent to the bank.

Rosedin said he handed the envelope containing the keys and Exhibit P19 to the accused. He said he related to the accused what Peter Lim had told him. He further said the accused accepted the keys and Exhibit P19 and kept them; the accused did not say anything; he did not give him (Rosedin) any form of acknowledgement. It is noteworthy that this part of the prosecution was not seriously challenged by the defence.

On March 27, 1973, Rosedin said the accused called him into his (the accused's) room and handed him Exhibit P19 and the keys with the instruction to collect the money from the bank. Before Rosedin went to the bank and in line with the indication made by Peter Lim to him earlier that Peter Lim would introduce him (Rosedin) to a bank official, he phoned Peter Lim telling him that he was going to the bank to collect the money and asking Peter Lim to be there so that he could be introduced to the bank official. Peter Lim agreed.

Rosedin went to the bank escorted by the accused's personal body-guard Yusoff bin Man. Peter Lim met him at the bank and was introduced to I.M.H. Scott, who had been told by Smorthwaite earlier that Peter Lim and a representative from Datuk Harun would be coming to collect the "tin-box". Rosedin handed Exhibit P19 to Scott who then left his room and returned with the tin box. Rosedin unlocked the box and confirmed that it contained $225,000 in cash. He then placed the money in his brief case. He acknowledged receipt of the money by endorsing on the reverse of Exhibit P19. He then returned to his office escorted by Yusoff.

On Rosedin's return to his office, he said he kept the money in his office safe. He recollected that he handed the money to the accused on the same day or the next day. No one else was present. The accused did not give him any acknowledgement. Rosedin also said he did not receive any money from the accused. Nor was he given any instruction concerning the $225,000.

Is there some additional evidence rendering it more probable that the story of Rosedin is true? As I have indicated, it is enough if there is independent evidence of relevant circumstances connecting the accused with the receipt of the $225,000. The evidence need not be direct; it is sufficient if it is merely circumstantial evidence of the accused's connection with the crime.

The crux of the prosecution case is that the bank officials were requested to give a donation to the accused. All arrangements were therefore made in that direction. Exhibit P19 was prepared when Peter Lim was asked to find out, in the first place, what the accused wished the bank to do with the balance of the money, and secondly, whether the nature of the receipt would be in order if it was made available in the name of the accused or his personally authorised representative. Now, where would Peter Lim obtain such information in the first place? Was it from Rosedin, or from the accused through Rosedin? Here again, as I have indicated, Rosedin was not in a position to give the information unless he had asked for it from the accused and as a matter of probabilities, it is more probable than not that he did just that. When the bank was informed of the propriety of the receipt, they prepared it in the form that now appeared in Exhibit P19. That document was an authority for payment in favour of the accused or his personally authorised representative. The placing of the money in the tin-box was only a method devised by the bank of keeping the money in safe custody on behalf of the accused. Rosedin acknowledged receipt of the keys to the locked tin-box, Exhibit P7. He prepared Exhibit P7 on the official letter-head and signed it on behalf of the accused. On March 27, 1973 he appeared at the bank to collect the money; he was escorted by the accused's personal body-guard. The question arises whether the accused's personal body-guard was indeed necessary to accompany Rosedin to the bank because of the amount of money which was substantial, or because it concerned the accused's own affair. To me it does suggest the latter. If that is so, then it is irresistible to conclude that the accused accepted the money from the bank when it has been established that Rosedin armed with the authority of Exhibit P19 withdrew $225,000 from the bank, and when Rosedin said that he handed it to the accused on March 27, 1973 or the following day. There can be no doubt that he handed the money to the accused and could give a narrative of the event that happened on that day. To suggest that he pocketed such a big sum of money is a travesty of facts. At any rate the bank was not informed or put on inquiry that the money did not reach the accused. There was on the other hand complete silence from the accused which the bank must have interpreted to mean that he had received the money. Furthermore, the bank's accounting machinery supports the prosecution case that the money was released to the accused.

These are damning circumstantial evidence that connected the accused with acceptance of the $225,000.

(4) *That the accused accepted the gratification of $25,000 and $225,000 as an inducement to do any official act in connection with the bank's application for alienation of the T.O.L. land.*

The emphasis here is on the gratification demanded and received as an inducement for official conduct. It is not the receipt of any gratification alone that constitutes the offence; it must be received as an inducement to do any official act. That phrase evidently means on the understanding that the gratification is received in consideration of some official act or conduct. Such an understanding may be inferred from the surrounding circumstances. Thus, if official conduct unduly favouring a person without any assignable reason be established against a member of a public body, and a payment by the person favoured to the public official before the official act is done is also established, the inference might fairly be drawn that the payment was received on an implied understanding that it was in consideration of that act. This inference would be strengthened to the extent of reasonable certainty, if it is further established that the person making the payment and the official, have been conferring together at a time when the transaction is pending, if the official can assign no reason for his taking part in such conferences. In such a case the inference that the unexplained payment is in consideration of the unexplained favour is irresistible.

It has been suggested by learned counsel for the defence that the proximity of the time factor between the two meetings and the first payment is not a consideration to draw an inference of "inducement" and the case of *Chempan Varkey* v. *State of Kerala*[4] was cited in support of the proposition. In my opinion, that case speaks for itself and can be justified on the facts. In my judgment time factor is relevant in arriving at an inference whether there is or is not an inducement because a connection between the payment and the official act as being by way of inducement for procuring such act must be clearly established by direct or circumstantial evidence. If the payment is entirely independent of the official act sought to be procured, and that it was accepted solely as a donation, the offence is not committed. It is possible in cases of corruption to envisage a bribe being corruptly offered and innocently accepted and possible even the other way round: see *R.* v. *Andrews-Weatherfoil Ltd.*[5]

In *Crown Prosecutor* v. *R.K. Pillai*,[6] it was held that since the payment of money was entirely independent of the application for an export permit that was made and that it was given solely as a donation to the Sabha, and since contributions were being publicly invited for the building fund of the Sabha and were pouring in, the offence was not committed.

The *sine qua non* is the establishment of a connection between the performance of the official duty and the demand of the gratification before it can be said that the gratification demanded is an inducement for doing favour in relation to the official act. In *Imperatrix* v. *Appaji*[7] the amount was demanded directly for the restoration of the mahars in office; in *B.K. Sen* v. *Prasad*,[8] the investment in government war loans asked for specifically for the performance of the arm clerk's duty of putting up the paper to the higher officer who had the power of granting the licence; and in *R.* v. *Swemmer*,[9] the bribe was given so that the official, whose duty it was to receive, classify and lay the tenders before the director of supplies, and to give any information of importance bearing on the tenders, could put up the tender before the said director whose duty it was to recommend it to the tender board which was the approving authority.

Did the accused ask and receive the gratification as an inducement to give favoured treatment in respect of the bank's new building project? The whole thing revolves itself into a matter of fact; it turns upon the question of evidence, whether there was or was not an implied understanding that the gratification was demanded and received in consideration of the official act sought to be favoured. The question here is not so much what the accused did, but what he professed to do, and what the bank believed they could do, upon which they made the payment.

Smorthwaite got the impression that the donation and their new building project were interconnected by reason of the short period of time that had elapsed between his first meeting with the accused on February 22, 1972 and the suggestion in April 1972 of a political donation, even though nothing was actually said. That is also borne out by his letters of April 24, 1972 and July 24, 1972 which speak for themselves. If the donation (which was later made) and the project was not connected I do not think the bank would have made the political donation. In this connection Smorthwaite has this to say:

"The decision I had to make, having taken into question that the request for a donation was probably connected with our new building, was not so much what we might gain by making the donation, but what we might lose if we did not, and I advised my head office accordingly."

Smorthwaite said for want of a better word he used the words "extra development charge" in his letter of April 24, 1972 to indicate that a political donation was requested of them. He did not consider it a bribe; if a bribe had been suggested he said he would not have assented to it. But as I have said before, in a corruption case, it is possible to envisage a bribe innocently offered and corruptly received: see *R.* v. *Andrews Weatherfoil Ltd., supra.*

Administrative delay was the main cause of the precariousness felt by the bank officials which led them to ask for an appointment with the accused. The first meeting stands as visible evidence of the accused's commitment in the matter. That is reflected in Smorthwaite's letter of February 22, 1972:

"All this may take time although the Chief Minister had already summoned the various authorities concerned before we left his office, so it may well be that things will now move a little faster than previously. The main thing is that we have the agreement in principle of both the Federal and State governments and now that we have got beyond the departmental stage, we should be in a position to submit our drawings to the town planners in the not too distant future."

But things did not move faster; on March 7, 1972 the application concerning the T.O.L. land was still under consideration by the Land Office. In April 1972, the request for a political donation was com-

municated to the bank officials. That was reflected in Smorthwaite's letter of April 24, 1972 stating, *inter alia*, that a 99 year lease for that part of Benteng over which the bank wished to erect the cantilevered podium block was indicated: that he had managed to find out the State Government's idea on the extra "development charge" and a figure of 2% had been mentioned; and that as they had got down to fundamentals; they did not anticipate any further hold up and firm approval should be given fairly soon. On July 4, 1972 the Standing Committee which processed all land applications recommended approval of the application for alienation of the T.O.L. land. The accused who normally presided over the meetings of the Committee did not attend that meeting. But on July 7, 1972, he summoned the Chief Administrative Officer, Bandaraya and a number of government officials to discuss the bank's new building project. On July 13, 1972 he presided over the meeting of the Executive Council which deferred decision concerning the application for alienation of the T.O.L. land, pending an application by the bank for alienation of the State land on part of Jalan Benteng. Learned counsel for the defence argued that the decision was a wise one since the two matters were inseparably connected and it was only prudent to defer the decision pending an application from the bank, so that both applications could be dealt with together. There was nothing, he said, incriminating about it. On the other hand the learned Solicitor-General contended that consideration of alienation of the State land could have been made at the proper time, but the application for alienation of the T.O.L. land which was then before the Executive Council should have been approved as recommended by the Standing Committee. It is here, he stressed that the accused was holding the trump-card — "no donation, no land". Whatever the arguments indicate, one thing certainly stands out, that is, the matter was still not resolved. Smorthwaite felt that the matter concerning the air-space and the underground car-park was still being held up. He therefore asked for the second meeting (July 24, 1972) which was attended by the government officials concerned, and he brought up the subject of the air-space and the car-park. He gained the impression that the problems were resolved on the spot. The accused declared in round terms "that he wanted it settled once and for all with no more arguments." Those were not just plain words but were uttered with a definite meaning and purpose — they carried home a particular message. The accused's conduct on that occasion showed beyond doubt that he was only too willing to exercise his official influence to expediate the application when as a matter of fact the application for alienation of the State land had yet to be submitted and processed by the departments concerned. (It may be noted here that the application was submitted only on January 30, 1973.) It surely showed perceptible sign of bending on major issues which had yet to be raised. Is not such conduct unduly favouring the bank?

The bank in due course received the message. It need not be by express words. Barely twenty-two days had passed after that meeting, *i.e.*, on August 16, 1972, on the eve of the accused's departure for overseas, words came from his office that a sum of $25,000 was needed on that day. The bank willingly and readily made the payment knowing very well that was part of the $250,000 deal. The circumstances in which the money was raised and given at the airport lends credence to the prosecution case that the accused knew all along that the money was received as part of the donation connected with the bank's new building project.

The government officers concerned also read the message. Between July 24, 1972 and the end of the year events moved with startling rapidity. On August 7, 1972 PHTKL informed the bank of the Executive Council's decision and indicated that the application would be reconsidered when the bank have made a formal application for alienation of the State land on Benteng. On August 21, 1972 the bank's architect wrote to PT&G enclosing a copy of the site plan of the State land on Benteng which the bank wished to apply for a 99 year lease. On October 14, 1972 the bank's architect submitted their plans to construct a 28-storey building to Bandaraya. On October 18, 1972 PT&G wrote a letter to PHTKL enclosing the architect's letter of August 21, 1972 with a copy to the architect directing them to communicate direct with PHTKL. On November 3, 1972 there was a minute in the Land Office file (Exhibit P9A) directing one Johari to send the application forms urgently. The minute following that was to this effect: the writer, could be Johari, had discussed with one Mohd. Din of Hongkong & Shanghai Banking Corporation on December 4, 1972 and the forms had been handed to him for necessary action and that the (Land) office at the moment was awaiting them. It was about this time that the bank asked for and received the message that the accused wished them to issue a receipt concerning the balance of the $225,000. It was also during this period (January 23, 1973) that the accused phoned PHTKL Raja Azman to expedite the bank's application and to treat it as a matter of urgency. Raja Azman must have studied the file since he just assumed office on January 1, 1973, and on January 30, 1973 the bank made a formal application for alienation of State land on Benteng. On February 17, 1973 PHTKL asked Bandaraya to comment on the bank's application. It was during this month (February 20, 1973) that Exhibit P19 and the keys to the locked tin-box were handed to the accused who in the following month (March 27, 1973) asked Rosedin to withdraw the money from the bank's security safe. Between January 29, 1973 and October 18, 1973 there were a series of correspondence between the bank's architect and PHTKL, PP&T and Bandaraya, concerning the bank's matter. A notable but rather curious one was a letter to PHTKL dated April 6, 1973 notifying the latter that the bank would vacate their premises on April 16, 1973 on the assurance given in writing that their application of the T.O.L. land and the State land on Benteng would be approved soon so that they could commence their building project.

Considering these events in isolation, it may well be that they mean nothing; those are routine matters concerning the various government departments, and routine matters for the accused as head of the State

Government to take a keen interest in the development of Kuala Lumpur. But when these events are cumulatively considered it is quite obvious to me that those Government departments had read the accused's message on the wall and that the accused had taken an unduly active part in favouring and expediting the bank's application concerning their new building project. The facts also demonstrate acceptance by the accused of the balance of the donation, done discreetly and not by overt coercion, in consideration of the said application.

In the circumstances, I am satisfied that the prosecution has proved its case in relation to all three principal charges, which if unrebutted, would warrant his conviction.

I only made a few amendments to the word "T.O.L. 6450" to read "T.O.L. 6540" and with regard to the second and third principal charges the words "for a political party, namely, United Malays National Organisation — (UMNO)," were deleted as they were not apt in consideration of section 9 of the Prevention of Corruption Act, 1961.

The only point worth mentioning at this stage is a submission of counsel for the defence that the prosecution's failure to call Ishak, the representative of the bank's quantity surveyor, who it is alleged was present at the first meeting with the accused on February 22, 1972, would raise the presumption under section 114(g) of the Evidence Act. Without going into detail, it is sufficient for me to say that an adverse inference against the prosecution can be drawn only if it withholds certain evidence and not merely on account of its failure to call certain evidence. In my view, it is a misconception to speak of the prosecution as having a duty to the accused to call all witnesses who will testify as to the events giving rise to the offence charged. The misconception has arisen from treating some observations in the decided cases, which have been made with a view of offering guide lines to the prosecution in how to approach its task, as the prescription of an inflexible duty to call all material witnesses, subject to certain exceptions or to special circumstances. I am sure this case is not one of these exceptions. In any event, Ishak was made available to the defence at the end of the prosecution case.

In essence, the defence is that the accused received the two sums of money as donation for UMNO, pure and simple, and not as an inducement for the approval of the bank's application. If anybody had told the accused that those donations were made as an inducement for approval of the bank's application, he said he would not have accepted them. The accused further said that the UMNO Constitution encourages donations and that from time to time he had received donations for UMNO, normally in cash, but had always made sure that there were no strings attached. In his own mind he said there was no connection between the donation and the bank's application. He had never asked for a donation or solicited one from anybody. He denied taking an active part concerning the bank's application after receiving the donation. He further said that it is not unusual for a person to give him a donation today and months later that person would make an application for some matters connected with his own affairs; he would never connect the two together.

What is the evidence for the defence?

The accused said that sometime in early 1972, Rosedin informed him that certain representatives of the Hongkong & Shanghai Banking Corporation wanted to see him concerning their new building project. Prior to that he said he was not aware that the bank had made any application to the State. He agreed to a meeting on February 22, 1972 where Smorthwaite and a Chinese man, possibly 2, came and discussed with him the problems regarding the bank's application for a small strip of land between lots 76 and 77 and in connection with the road in front of Jalan Benteng for purpose of putting a cantilever on the road. He was very enthusiastic about the project because of its usefulness from the City's point of view but he said two problems emerged, *i.e.*, concerning the night hawkers and the public roadway, and if those two problems could be solved he said the State Government would have no objection to the project.

He categorically denied any mention or discussion of a political donation at the meeting. He denied that Rosedin asked him after the meeting regarding the amount of the political donation and that he had said $250,000.

He did not attend the Standing Committee meeting on July 4, 1972 but on July 7, 1972 he had discussions with the Chief Administrative Officer of Bandaraya, Ahmad Hussein bin Abdul Jalil, because he wanted to know the problems concerning the night hawkers. He said it was not unusual for him to have discussions with District Officers and Assistant District Officers. That happened always.

He presided at the Executive Council meeting on July 13, 1972. The Standing Committee had recommended approval of the bank's application for the small strip of land but did not deal with the problem of the air-space. He briefed the meeting on the interview he had with the bank's representatives on February 22, 1972. The meeting then deferred decision until the problem of the air-space had been processed. He denied deferring the decision because the bank had not given any firm indication regarding the donation.

He then said he did not remember meeting Smorthwaite on July 24, 1972 but that was possible. He further said he called government officials concerning the bank's project but could not recall if the bank officials were present, but it was possible they were present.

Between the two meetings of February 22, 1972 and July 24, 1972 he did not meet the bank officials; he did not meet Peter Lim; he did not ask anybody to ask any donation from the bank; he did not arrange with anybody to suggest a donation by the bank to UMNO, or to himself, or to anybody else.

He then described the payment of the $25,000 at the airport on August 16, 1972. It more or less tallies with the evidence led by the prosecution. He,

however, added that he had no time to think of the $25,000 as there was a crowd of well-wishers around him and there were lots of matters to be looked into.

He admitted phoning Raja Azman on January 23, 1973 but could not remember if he had asked him to expedite the application.

Regarding Khalil Akasah's letter — (Exhibit P52), he said he received a note from Khalil Akasah regarding the bank matter requesting him to look into the land application fearing that the bank would shift their head office to Singapore.

He then said he was a member of the Board of Management of UDA and was told at one of its board meetings either in late 1972 or early 1973 of the bank's project. Eventually UDA obtained 30% participation in the joint-venture with the bank and the Hongkong Lands Company. He remarked that subsequent developments strengthened his view that the bank's project was a good thing for Kuala Lumpur generally. It was in accordance with general government policy.

With regard to the first charge, the accused denied soliciting a political donation at any time between February 22, 1972 and July 24, 1972. He said he did not at any time give any indication by way of solicitation or otherwise that he required a donation from the bank for UMNO. The donation came voluntarily from the bank.

The accused was chairman of the Selangor UMNO Liaison Committee and was authorised as the only person to operate the Special Fund. He was the sole authority to receive donations. Not even Haji Ahmad Razali, his political confidant and secretary of Selangor UMNO Liaison Committee because Haji Ahmad Razali had no authority to receive donations. That was the reason why he asked the accused at the airport what to do with the $25,000. Haji Ahmad Razali said in evidence that even as a member and secretary of the committee he was not in a position to say how much money was donated to the Special Fund or how much money was taken out; although at times he had received money from the accused for party expenses, but did not know if it came from the Special Fund or the General Fund. The operation of the Special Fund was secretive and within the sole knowledge of the accused that it was never tabled at the Selangor UMNO Liaison Committee meetings. It is true to say that it is a secret fund and being operated discreetly.

We can leave Rosedin out of the picture altogether because he never had authority to accept donations on behalf of UMNO.

The bank officials categorically said that the request for a political donation was conveyed to them in April 1972, hence Smorthwaite's letter of April 24, 1972:

"I have also managed to find out the State Government's ideas on the extra development charge and the figure of 2% has been mentioned. . . ."

Evidently the request never originated from any of them. Of that, I am certain. The penetrating question is who had made the request to the bank to make an offer of a political donation. It is not easy to determine from the mass of evidence who had made the request, but on the other hand, it is not usually difficult to infer it from the established facts and the surrounding circumstances. It is a mistake to think that because a fact cannot be established by direct evidence, it cannot therefore be readily inferred from proven facts. In my opinion, to request for a political donation of that magnitude from a large expatriate firm is no easy task for any "light-weight" politician or even the secretary of the Selangor UMNO Liaison Committee. It takes a "heavy-weight", a person in the position of the accused to do that; and the accused had the authority and the opportunity to do it. If the Special Fund is a secret fund, being operated discreetly and not overtly, it is well within the range of reasonable possibility that it may have been requested in similar vein — and only by the person at the top. Such bald assertions that the accused did not at any time solicit a political donation from the bank do not create much confidence in the mind of the court. When all the evidences are considered as a whole, I have no doubt left in my mind that the charge against the accused has been proved beyond all reasonable doubt.

With regard to the second and third charges the accused denied the offence and also refuted the allegation that he accepted the two sums of money as an inducement for securing official favour in connection with the bank's application. He said he received the two sums as donation for UMNO, pure and simple; with no strings attached. In other words the donation had no connection with the official act sought since it was made 14 months and 7 months respectively before the Executive Council decision.

I am constrained to say that the argument is entirely fallacious. If that view is correct then it will be the easiest thing for a person in such a position to stipulate for payment long before the official act is done and escape from committing an offence. In my judgment, such a construction of the law is not in keeping with either the language or spirit of section 9 of the Prevention of Corruption Act, 1961. What is forbidden generally is accepting any gratification as an inducement to do any such thing as is described in the section. Any other construction would lead to an absurdity.

The accused said that the first time he had ever heard of the donation was either on August 16, 1972 when Rosedin told him at the airport that a Chinese wanted to give a donation of $25,000 to UMNO or on March 27, 1973 when he said Rosedin told him that he (Rosedin) had received $225,000 cash donation for UMNO from the bank. It is in this connection that his statement to Sebastian (Exhibit P10) assumes much importance. There he said Rosedin told him that Hongkong & Shanghai Banking Corporation wanted to donate $250,000 to the party and he could not remember the date. He continued, the only thing he further remembered was that when he was leaving for Munich sometime in 1973 he was at the airport Subang, Kuala Lumpur, when a male Chinese whose name he did not know approached him at the airport lounge and wanted to give him an envelope which he knew to contain money. Ob-

viously there is a contradiction and he explained in this court that when the police statement was made, he was caught by surprise, and was not therefore in a position to tell the truth; and only on looking back he recollected that what he had there said was not the truth, and his version in court is the unadulterated truth.

In the first place, the accused is not just any other man; he is legally qualified, having held legal and judicial appointments; and he was then the Menteri Besar of Selangor, and had the benefit of two senior counsel to advise him. To suggest that he may have made an untruthful statement is, to my mind, difficult to swallow. That is an insult to his sanity. It is highly improbable that the statement in court, as pleaded by him, is the true version. The inference is that the court version must have been given to create evidence, if possible, in his favour.

The accused stated in evidence that he was surrounded by a large crowd of people at the airport, and had a lot of things in his mind that he had no time to think of the $25,000. The odd thing about it is that he expressed no concern, he did nothing about it other than asking Haji Ahmad Razali to accept the money on his behalf and put it in the bank. Is that the conduct of a man who said that that was the first time he had ever heard of the donation? No attempt was made in evidence to qualify or explain away that fact so as to make it any different in its result from that which I think it must necessarily be.

The accused then said that he remembered the day he was in his office-room when Rosedin came in and said that he (Rosedin) had received $225,000 cash donation for UMNO from the bank, that the money was with him (Rosedin) and had asked him (the accused) what to do with the money, and the accused had instructed him to credit $220,000 into the Special Fund and to keep $5,000 for political expenses. In my view this statement involves an element of conjecture. Firstly, it has been established that Rosedin had no authority to receive or accept donations, let alone a cash donation of that amount. It follows that the accused's statement falls to the ground. Again, if the accused's statement is true that it was the first time he had heard of the donation, again he expressed no concern, he did not put on any inquiry, but seemed to welcome it as a matter of course. In whatever way one looks at it, it does seem a little bit far-fetched. Would a donor of a substantial sum of money just leave it at the doorstep of the Menteri Besar's office and leave? Would not the accused convey his gratitude to the donor by word or letter? It appears to me that a story which leaves entirely unexplained important facts such as these cannot be wholly true. Secondly, I cannot myself see any plausible ground for saying that the $220,000 came from the donation of $225,000. Rosedin's evidence on this point is so nebulous that I feel quite dubious about the whole thing. He has given two versions and put it at different dates. He said he might have given the donation to the accused either on March 27, 1973 or on the following day. If the latter, then it cannot be true that the $220,000 was part of the donation, since it was paid into the bank the previous day. The accused is not certain when he received the donation. His remark was that he remembered the day when Rosedin told him about it, but could not specify any day. In my judgment his statement, like so much else that was alleged by him, is very extraordinary and bare. It does not carry much weight.

The accused denied Rosedin handed him Exhibit P19 and the keys on February 20, 1973. He denied handing the two articles back to Rosedin on March 27, 1973 with instruction to collect the $225,000 from the safe-deposit box. The accused realised the odds were simply overwhelming. The evidence was substantial. He attempted to seek an explanation and fix blame on Rosedin, and the most beguiling explanation was that Rosedin was incriminating him to save his own skin since he had been called many times by the Biro Siasatan Negara officers. His explanation is, in my opinion, palpably unreasonable. It is in evidence that the accused's body-guard Yusoff bin Man, escorted Rosedin to the bank that day. To my mind a body-guard to the Menteri Besar, Selangor, is rather a personal matter in the sense that he guards the Menteri Besar round the clock, unless directed to be released or go at his command. Was not the visit to the bank on the accused's errand and with his knowledge? In my opinion, no personal body-guard would go visiting any bank on a frolic of his own. I think the defence here is manifestly puerile.

It really boils down to the fact that the accused received the two sums knowing fully well what they were for and that he welcomed them with open arms; it was a large firm's generous donation to a politician in return for the favourable and expeditious treatment by the accused to get the application on the Executive Council table.

The argument that the two sums of money were received as donation for UMNO, pure and simple, is no defence if they were received as an inducement to show favour to the bank in connection with their application for the T.O.L. land. The proven facts clearly militate against the idea of a gratuitous donation. Modern law attaches little importance to innocuous terms like donation, but will get into the core of the matter, and see what the nature of the payment is and if it is an illegal gratification taken by a public officer for doing a favour in the exercise of official functions it will come within the scope of section 9: see *In re M.S. Mohiddin*,[10] In re *Varadadesikachariar*.[11]

It is also no defence to urge that the Executive Council decision was in line with the recommendations of the PT&G and PHTKL; that the Executive Council did not do anything that it should not have done. The gist of the offence is the inducement to show favour irrespective of the fact that the decision is a just one. Thus, it guards against such a plea as was set up as an excuse by Lord Bacon, the Lord Chancellor. "It is pretended," says Hume in his history, "that Bacon had, still in the seat of justice, preserved the integrity of a judge, and had given just decrees against those very persons from whom he had received the wages of iniquity." It may be

recalled that the Lord Chancellor was charged with receiving bribes and presents from parties in suits before him. He was condemned to pay a substantial fine and to be imprisoned in the Tower during the King's pleasure.

The accused has made the most contradictory statements and anomalies never realising that the court might compare notes and wonder what is the real explanation of all the contradictions and anomalies.

He said he was not aware that the bank had made any application to the State. That is not true. There is indubitable evidence that he received Khalil Akasah's letter dated October 2, 1971, the last line of the third paragraph reads: "They have already written to the District Officer about it." Indeed they had; the bank's application was submitted on June 18, 1971.

He next said that Khalil Akasah wanted him to look into the bank's matter and give a decision soon fearing that the bank would transfer their head-office to Singapore. That is also not true. That letter mentions no such thing.

He further said that the Special Fund originated from the late Tun Abdul Razak who encouraged him to establish the fund at State level for purposes connected with party politics and to increase the image of the party such as providing for scholarships, the poor, sports, supporting the P.L.O. but the main purpose is for election expenses. He said that the fund being a secret fund there is no statement of account. I can well understand that contention but it loses sight of one thing. For his own personal satisfaction, to say the least, it is only prudent that he keeps some note or account to show how the money came in and how it went out. His note concerning the sums of money received from Sai Wai Realty bears me out (Exhibit P51). A naked statement that there is no account at all is, to my mind, not a plausible suggestion. It might carry some weight at a Selangor UMNO Liaison Committee meeting but it certainly does not carry much weight in a court of law. That kind of evidence contains inherent weaknesses which become more apparent the more one probes. I cannot bring myself to come to the conclusion that the accused comes within the category of the "poor" so as to get a bounty of $2,500 (Exhibit P44) and $25,000 (Exhibit P45) from the Special Fund. If he said that he had used his own money to the extent of those 2 sums for an authorised purpose or purposes and that those sums were the reimbursement from the Special Fund, then the evidence is wanting. It is not possible to accept the accused's immaculate words. They are a classic piece of mendacity. His credibility, because of those payments to himself, if nothing else, is battered and discredited. I think the circumstances established by the evidence are sufficient to warrant the reasonable inference that he pocketed party funds.

The statement concerning the non-receipt for the $225,000 is another curious feature of the defence. He said not all donors claimed receipts; there were also those who did not wish their names disclosed. In the case of Hongkong & Shanghai Banking Corporation he said Rosedin did not ask for a receipt, and as far as he was concerned he did not find out if the bank required a receipt. It is in evidence that Rosedin acknowledged receipt of that sum by endorsing on the reverse of Exhibit P19. As far as he was concerned, he has given an explanation. It is also in evidence that Haji Ahmad Razali issued a receipt for that $25,000 (Exhibit P8) and also that both he and the accused signed a receipt for the $500,000 (Exhibit P50). If Haji Ahmad Razali and/or the accused could have issued receipts for the two donations, there is no earthly reason why either Haji Ahmad Razali or the accused could not have issued a receipt for that $225,000. It is quite apparent that Haji Ahmad Razali knew nothing about the $225,000. The donation given by Malayawata is against the accused. It goes to show that the donation was given publicly and acknowledged publicly. That much cannot be said with regard to the $225,000. The suggestion that the bank did not ask for a receipt is so exiguous and consists of very vague and evasive answers by the accused.

The salient qualification demanded of a member of the Executive Council is honesty and incorruptibility, and that is reflected in the mandatory provisions of Article LIII(8) of the Laws of the Constitution of Selangor, 1959.

It is not disputed that elected members are only human with the ordinary frailties of human nature, and that sometimes, if not in most cases, where a member's personal or private interests are concerned, he may become subject to a blindness often intuitive and compulsive. That is the reason why Article LIII(8) is embedded in the Constitution. It is designed to prevent corruption at the Executive Council level, and does not, in my opinion, exclude the common law principle that a member of a government must be free from bias and must not be judge in his own cause. The spirit and intention of the article is wide enough to extend to any business in which it can be reasonably regarded as likely to influence a member and that includes any business connected with a member's political party.

The conception of the task of a member of the Executive Council finds its finest expression in the words of the oath of office, taken by him on his appointment, that he "will to the best of his judgment at all times freely give his counsel and advice to His Highness the Sultan for the good management of the public affairs of the State" and the guiding words are "freely give his counsel and advice", which means that the member gives his advice and counsel untainted from any personal or private interest, thus enshrining the impartiality and independence of his judgment.

It does seem to me that the moment the bank's application was before the Executive Council, there was an obligation imposed on the accused to bring it to the notice of the meeting that he had received a donation from the bank, even if he received it with no strings attached, so as to give colour or countenance to the belief that he was not doing anything which Article LIII(8) forbids. In my opinion, that would be the simplest way of telling the whole world that

he participated in the decision-making uninfluenced by the donation. On the other hand, such grave departure from the mandatory provisions of Article LIII(8), conveys but one conclusion and that is that he demanded and received the donation for the corrupt exercise of his public duty.

The accused has shown the utmost disregard for truth but then he is fighting for his integrity and honour. In the face of the numerous defects and anomalies in his evidence, all of which appear to be very material, I cannot say that he has created a doubt in the truth of the prosecution case.

During the course of the trial and at the stage when the prosecution sought to bring in evidence of similar facts under sections 14 and 15 of the Evidence Act to rebut the defence of corrupt intention, I did say that I would give a ruling in due course. I now do so, and I rule that Exhibit P48 and Exhibit P49 are not cogent and credible enough to merit consideration.

I find the accused guilty on all 3 charges.

Sentence:

It is painful for me to have to sentence a man I know. I wish it were the duty of some other judge to perform that task.

I believe the very extensive coverage of this hearing in the press has permeated all levels of our society. To me this hearing seems to re-affirm the vitality of the rule of law. But to many of us, this hearing also suggests a frightening decay in the integrity of some of our leaders.

It has given horrible illustrations of Lord Acton's aphorism "power tends to corrupt, and absolute power corrupts absolutely", and has focussed concern on the need of some avowed limitations upon political authority.

I repeat what I had said before — the law is no respector of persons. Nevertheless it will be impossible to ignore the fact that you are in a different category from any person that I have ever tried. It would be impossible to ignore the fact that, in the eyes of millions of our countrymen and women, you are a patriot and a leader. Even those who differ from you in politics look upon you as a man of high ideals. You had every chance to reach the greatest height of human achievement. But half-way along the road, you allowed avarice to corrupt you. It is incomprehensible how a man in your position could not in your own conscience, recognise corruption for what it is. In so doing, you have not only betrayed your party cause, for which you have spoken so eloquently, but also the oath of office which you have taken and subscribed before your Sovereign Ruler, and above all the law of which you are its servant.

You insisted that the pay-offs were in fact political contributions given and received in keeping with long-established practices and they had been made to look criminal by a hostile witness, scuttling to save his own skin. But the evidence plainly show that you devised a scheme of unparallel cunning and committed an almost perfect crime. But crime, though it hath no tongue, speaks out at times. Your method is your own doing because even the long arm of coincidence cannot explain the multitude of circumstances against you, and they destroy the presumption of innocence with which the law clothed you.

Political contributions have been a highly-organised professional obligation in Europe and in the States; they are a sign of the times. Malaysia, it seems to me, is emulating that way of life. Whatever may be the moral of it, so long as they are not given and received for the corrupt exercise of official functions, they are not a crime.

I believe that for the past few months you have suffered something like tortures of hell. The deprivations and sufferings you and your family went through should be enough penance.

It is also true that for a public official who rose so high, disgrace and banishment from public life are severe punishment indeed. I have duly taken that into consideration and also what has been said by your counsel.

I sentence you to one year's imprisonment in respect of the 1st Charge and 2 years in respect of each of the 2nd and 3rd Charges. All these sentences to run concurrently.

I also order the payment of $225,000 to UMNO Selangor — if not paid within a month, execution to issue.

Order accordingly.

Solicitors: *R.R. Chelliah Bros.; Adlan & Haji Suhaimi.*

HAJI YAHAYA BIN HAJI AHMAN & ANOR. v. W.E. PERERA & ANOR.

[O.C.J. (Mohamed Azmi J.) May 31, 1976]
[Kuala Lumpur — Application for Execution No. 97 of 1975]

Practice and Procedure — Execution — Application for — Judgment debtor with no more interest in land — Order of sale against judgment debtor granted — Application to set aside Order of Sale — Whether there was material irregularity — R.S.C. 1957 0.43 r. 11(e).

This was an application under 0.43 r.11(e) of the Rules of the Supreme Court to set aside an auction sale in respect of a piece of land pursuant to order of Registrar on the ground of material irregularity. The order of sale was obtained by the first respondent to satisfy a judgment debt against one Omar as administrator *de bonis non* of the Estate of Haji Ahmad, deceased. At the hearing of the application for execution before the Registrar, counsel for the judgment debtor objected to the application on the ground that the estate of Haji Ahmad, deceased had no more rights or interests in the property since it had been sold by agreement to the first applicant (who in turn sold the property to the second applicant). Despite the said objection raised by counsel, order of sale was granted to the first respondent, and during the public auction the property was sold to the second respondent as agent of a company.

Held, allowing the application and setting aside the auction sale: (1) the debtor had parted with the whole interest in the land well before the execution proceedings commenced and, as such, there was nothing left for the judgment creditor to satisfy the judgment debt;

(2) the order of sale ought not to have been made and there was a material irregularity as far as the conducting of the sale was concerned, and the applicants as *bona fide* purchasers, had sustained substantial injury by reason of such irregularity.